IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 5 OF 2006

M/S BHAKTI GARMENTS,MAPUSA GOA. ... Appellant
Versus
MR.SUBHAS
B.VISHWAKARMA,MORIA,BARDEZ GOA ... Respondent

Mr. S. R. Rivonkar, Advocate for the Appellants.

Mr. Ulhas K. Tari, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 21st September, 2007

P.C.:-

After hearing of arguments and after the Judgment was being dictated learned Counsel on behalf of the Accused states that this case pertains to only one cheque of Rs.5000/- dated 28-10-2001 and not to the cheque dated 22-10-2001 for Rs.5000/- and that the case pertaining to this last cheque is still pending before the trial Court. The above submission is made for the first time before the Court. Both the parties did not bring to the notice of the trial Court that Complaint Case No.689/2001/C pertained only to cheque for Rs.5000/- dated 28-10-2001 and the entire trial has proceeded on the assumption that the case pertained to both the cheques issued by the Accused and the issuance of which has been admitted by the Accused. The substance of accusation pertains to both the cheques and so the Judgment impugned in this appeal.

Learned Counsel on behalf of both the parties state that the trial pertaining to cheque dated 22-10-2001 for Rs.5000/- is still pending and arguments have been completed of the Complainant and for those of the Accused the case is fixed on 1st October, 2007. One fails to understand as to why both the parties did not choose that both the cases were tried by

one and the same Magistrate. Any Judgment delivered by this Court today is likely to affect the Judgment to be delivered in the case pertaining to the cheque dated 22-10-2001. Considering the above position, the impugned Judgment of the learned trial Court is hereby set aside and the case is remanded to the learned J.M.F.C. 'C' Court, Mapusa who is dealing with the case pertaining to cheque for Rs.5000/- dated 22-10-2001, to pass a common Judgment in both the cases, after considering the evidence led in the respective cases.

Appeal allowed on the above terms. Both the cases to be disposed off finally on or before 31-10-2007.

Records and Proceedings be sent to the learned J.M.F.C., 'C' Court, Mapusa.

N. A. BRITTO, J.

RD.